



Department of Energy
Washington, DC 20585

SEP 26 2006

MEMORANDUM FOR CLAY SELL
DEPUTY SECRETARY ES # 2006-008963

THRU: INGRID KOLB
DIRECTOR
OFFICE OF MANAGEMENT

FROM: BRIAN D. COSTLOW
DIRECTOR
OFFICE OF ADMINISTRATION
OFFICE OF MANAGEMENT

SUBJECT: ACTION: Request for Revision of Current Policy
Pertaining to Disposal of Surplus Department of Energy
(DOE) Firearms

ISSUE: The Department's current policy of destroying surplus
firearms, when they are no longer needed by DOE or
other eligible Federal agencies, conflicts with Federal
property management policy which was revised in July
1999.

BACKGROUND: In July 1999, the Federal Property Management
Regulations (FPMR) were revised to require Federal
agencies to make their surplus firearms available to the
General Services Administration (GSA) for donation to
State and local law enforcement entities. The
Department considered requesting a waiver from GSA
from these regulatory procedures, however, the
Department did not pursue this course of action.
Instead, it was determined that surplus firearms not
needed by other Federal agencies would be destroyed
pursuant to section 161g. of the Atomic Energy Act
(AEA) (42 U.S.C. 2201(g)); since the firearms were
acquired under the Atomic Energy Act, the Office of
the General Counsel indicated there is legal authority to
use section 161g. for their disposal. The determination
not to participate in GSA's program for making excess
weapons available to State and local law enforcement
agencies was based on concerns about the adequacy of
safeguards and potential for identifying weapons as
belonging to DOE.



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DISCUSSION:

Since revision of the FPMR in 1999, GSA has had a program to make surplus Federal firearms available to State and local law enforcement agencies after the firearms have been made available to all Federal agencies. If a State/local law enforcement agency requests listed weapons, ownership of the requested weapons transfers from the Federal agency to GSA; GSA retains the title to transferred weapons until they are destroyed. When the firearms are no longer needed by the State or local law enforcement agency, the firearms are either returned to GSA or destroyed under the process outlined in GSA transfer guidelines. No firearm bearing DOE-identifiable insignia (i.e., DOE seal, etc.) would be part of this program.

To date, DOE has destroyed over 1500 weapons (acquisition cost >\$450,000) that could otherwise have been made available to state or local law enforcement agencies. The National Training Center (NTC) currently has 801 excess weapons. If current policy is revised to allow DOE participation in the GSA program to make surplus Federal weapons available to state and local law enforcement agencies, it is recommended that a periodic review of DOE's participation be conducted.

A thorough internet review conducted by the Office of the General Counsel did not uncover any information regarding unfavorable media coverage of a Federal agency relating to the GSA weapons donation program.

OPTIONS: Option 1: Continue to use Section 161g. of the Atomic Energy Act as authority to dispose of excess weapons, but participate in the GSA program by providing selective reports of excess weapons to the GSA for donation to state and local law enforcement agencies. This option provides the Department the greatest flexibility in managing its excess firearms stockpile. Since FY 2000, an average of 1,149 firearms per year have been donated by *all* participating Federal agencies. The average drops to 892 firearms per year since FY 2004. DOE currently has 801 excess firearms. If all were reported to GSA at once, we would essentially "flood" the market. This option allows DOE to report excess firearms to GSA, who would first attempt to donate such firearms to qualifying Federal agencies. Any surplus firearms

would be made available to participating state and local law enforcement entities.

Pros:

- This option would allow DOE to participate in a Federal program that is sponsored and overseen by GSA. DOE is currently one of only two major Federal agencies (HHS being the other) not participating in this or a similar program. (DoD operates a comparable program.)
- Many of the firearms which are or will be reported in excess are in usable, and in some cases new, condition. Destruction of these firearms, outside of the approved GSA sponsored program, may be construed as a waste of Government resources.
- Compliance with the FPMR policy would support the Administration's policy of providing support to State and local anti-crime efforts and free up scarce resources for law enforcement programs other than for the procurement of replacement firearms.
- The FPMR revision requires participating law enforcement entities to sign a conditional transfer document which requires that donated firearms be made available for retransfer to another law enforcement entity, with prior written approval of GSA, or destroyed, when no longer needed. Destruction of firearms, per the GSA transfer guidelines, requires that the donee and State Agencies for Surplus Property (SASP) representative state in writing that the firearm(s) was/were destroyed in accordance with authorized methods of destruction.
- The Office of the General Counsel has reviewed the GSA regulations and transfer document and determined that the Department has adequate legal protection from liability should a transferred firearm be used in an unauthorized manner.

Cons:

- Potential negative media coverage if a DOE firearm were used in an unauthorized manner (i.e., through improper resale or theft a DOE firearm could be used in criminal activities).
- Gives GSA the authority to (1) revise transfer terms and conditions and (2) retransfer firearms from donee to donee without the prior holding Federal agency's knowledge or concurrence.

Option 2: Continue to exercise DOE's disposal authority under Section 161g. of the AEA. This option would allow the Department to continue its current policy of destroying firearms that are no longer needed by the Department or any other eligible Federal agency. The destruction of firearms involves no risk to the Department since the firearms are under the control of (a) DOE for on-site or site-arranged local destruction or (b) DoD when destroyed by DoD under an interagency agreement.

Pros:

- The Office of the General Counsel found that destruction of the firearms is an authorized use of the Secretary's authority for firearms acquired for the purpose of the AEA, pursuant to Section 161g. of the Act.
- The ultimate control and disposition of excess firearms is under the direct control of DOE or DoD.
- Eliminates the opportunities for DOE firearms to be (1) acquired by donees in numbers excess to legitimate needs, (2) misused while under donee control, (3) "traded" - or excess local firearms to be traded - and wholesaled by gun dealers to the public, and (4) misreported as "destroyed."

Cons:

- Since the destruction of firearms is inconsistent with the donation procedures set out in the FPMR policy, the decision to use the authority under Section 161g. of the AEA could be the basis for criticism by GSA.
- Potential negative media coverage against the positive consequences of providing usable firearms to local law enforcement officials who have a need for such weapons.
- Potential negative media coverage since the destruction of usable weapons could be viewed as a waste of Government resources.

SENSITIVITIES: Implementation of the Federal firearms donation regulation is a sensitive issue. It received Office of Management and Budget (OMB) and Attorney General visibility during the rulemaking process.

POLICY IMPACT: Current DOE policy would need to be revised so as to allow DOE participation in the GSA's program for making excess weapons available to state and local law enforcement agencies.

RECOMMENDATION: That you approve the Department's participation in GSA's program for making excess weapons available to state and local law enforcement agencies (Option 1).

APPROVED: _____

Clay Seel

DISAPPROVED: _____

DATE: _____

10/2/2006